FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TELEVISA S.A. DE C.V., *Plaintiff-Appellant,* v. DTVLA WC INC., *Defendant-Appellee.*	No. 02-56798 D.C. No. CV-02-05862-LGB OPINION

Appeal from the United States District Court
for the Central District of California
Lourdes G. Baird, District Judge, Presiding

Argued and Submitted
December 1, 2003—Pasadena, California

Filed April 1, 2004

Before: Alfred T. Goodwin, Robert R. Beezer,
Circuit Judges, and William W Schwarzer,
Senior District Judge.*

Opinion by Judge Beezer

*The Honorable William W Schwarzer, Senior United States District Court Judge for the Northern District of California, sitting by designation.

COUNSEL

Helen B. Kim, Fried, Frank, Harris, Shriver & Jacobson, Los Angeles, California, for the appellant.

Robert D. Crockett and Robert K. Lu, Latham & Watkins, Los Angeles, California, for the appellee.

OPINION

BEEZER, Circuit Judge:

Televisa, S.A. de C.V. ("Televisa") appeals the district court's order compelling arbitration and denying Televisa's motion for a preliminary injunction. We have jurisdiction pursuant to 28 U.S.C. § 1292 (a)(1) and 9 U.S.C. § 16(a)(3), and we affirm. The arbitration clause in question is broad enough to cover the parties' disputes and nothing in the parties' agreements evinces a contrary intent.

I

Direct TV Latin America LLC, a parent company of DTVLA WC, Inc., and certain DTVLA licensees (collectively "DTVLA") hold the exclusive rights to broadcast the 2002 FIFA World Cup soccer tournament (the "World Cup") in Mexico. DTVLA granted TV Azteca, S.A. de C.V. ("TV Azteca") the rights to telecast certain matches and other events of the World Cup. DTVLA then entered into a series of agreements with TV Azteca and Televisa, granting Televisa the right to telecast eighteen matches of the World Cup via free terrestrial television.

The parties' relationship consists of the following three separate but related agreements: (1) a Sublicense Agreement between DTVLA, TV Azteca and Televisa; (2) a Letter Agreement between DTVLA and Televisa; and (3) a Letter of Credit ("LOC") from Televisa to DTVLA. The three agreements were executed contemporaneously. Under the Sublicense and Letter Agreements, Televisa was required to "blackout" certain portions of the World Cup telecast from broadcast on its affiliated satellite television network, which competed directly with a similar network owned by DTVLA.[1]

[1]The Letter Agreement sets forth in detail the definitions and obligations regarding the blackout requirement. The Sublicense Agreement in

On June 21, 2002, approximately one week prior to the conclusion of the World Cup, DTVLA accused Televisa of failing to comply with its blackout obligations, breaching both the Sublicense Agreement and the Letter Agreement. DTVLA threatened to terminate Televisa's World Cup feed and served Televisa with an American Arbitration Association demand for arbitration, which alleged a "Breach of the Sublicense Agreement." DTVLA enumerated the following specific basis for its dispute in a subsequent letter to Televisa:

> 1. Televisa failed to blackout transmissions of World Cup games for programs other than general news programs. . . .
>
> 2. Televisa has interfered with DTVLA contracts, as well as economic relationships with third parties.
>
> 3. Televisa violated broadcast commitments under sublicense agreement, including, but not limited to, the improper display of on-screen graphics.
>
> 4. Televisa's actions gave right to terminate a April 18, 2002 letter agreement.

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turn incorporates the Letter Agreement by reference and, under the label "Broadcast Commitments," provides, in part, that:

> As material obligations hereunder, Licensee shall:
>
> . . .
>
> 6.6 take all actions as set forth in the Letter Agreement (attached hereto as Annex 3), which actions are designed to ensure that all entities distributing the signal of Licensee that are engaged in Television Distribution other than only via Free Terrestrial Television in the Licensed Territory . . . shall "black out" all telecasts by Licensee of the Matches and any portions thereof including all Highlights . . . , unless otherwise agreed to in writing by DTVLA . . . .
>
> 6.7 Any breach of this clause 6 shall be considered a material breach of this Agreement.

DTVLA sought "declaratory relief affirming the proper termination of [the Letter Agreement]; . . . a determination that it properly took down $10,000,000 on a letter of credit; . . . a judgment for an additional $10,000,000; . . . [and] any other relief which may be appropriate."

DTVLA based its demand for arbitration on § 22.2.2 of the Sublicense Agreement, which states, in part:

> All controversies and claims relating, related to or arising out of this agreement that cannot be resolved by good-faith negotiations ("Arbitrable Disputes") shall be resolved only by final and binding arbitration conducted privately and confidentially in Los Angeles, California, metropolitan area by a panel of three arbitrators . . . .

Televisa argued that DTVLA's claims are based on Televisa's obligations under the Letter Agreement, not the Sublicense Agreement. The Letter Agreement does not provide for the arbitration of disputes; instead § 8.4 of the Letter Agreement states:

> For any aspect herein related to the interpretation, fulfillment and judicial requirement of the obligations of Televisa hereto, this Letter Agreement shall be governed by and construed in accordance with the applicable laws of Mexico and Televisa and DTVLA expressly and irrevocably submit themselves to the jurisdiction and competence of the courts of Mexico City, Federal District, irrevocably waiving any other jurisdiction to which they might be entitled due to their present or future domiciles for all disputes related to or arising out of the obligations of Televisa hereunder.

The Letter Agreement contains no reference to arbitration.[2] At

[2]The LOC similarly provides for disputes to be resolved in the courts of Mexico, stating: THIS IRREVOCABLE STAND BY LETTER OF

issue in this case is whether the parties' disputes involving the blackout requirement are within the scope of the Sublicense Agreement's arbitration clause.

On July 25, 2002, Televisa filed a complaint at issue here seeking, *inter alia*, a declaratory judgment that the claims in DTVLA's arbitration demand are outside the scope of the Sublicense Agreement's arbitration clause. Televisa argues that such claims should instead be adjudicated in the courts of Mexico City, Mexico pursuant to the Letter Agreement. In response, on August 2, 2002, DTVLA moved to compel arbitration, stay the district court proceedings and enjoin future proceedings in Mexico. DTVLA argues that although its claims pertained to the blackout obligations set forth most completely in the Letter Agreement, the Sublicense Agreement's arbitration clause is broad enough to cover the dispute. On August 7, 2002, Televisa moved for a preliminary injunction to stay the arbitration.

The district court granted DTVLA's motion to compel arbitration and denied Televisa's motion for a preliminary injunction. The court granted DTVLA's request for a stay of the district court proceeding but denied its request for a stay of future proceedings in Mexico. The district court also denied Televisa's subsequent request for a stay of arbitration pending this appeal.

We have jurisdiction over Televisa's interlocutory appeal from the denial of its motion for a preliminary injunction pursuant to 28 U.S.C. § 1291(a)(1). We have jurisdiction over Televisa's interlocutory appeal from the granting of

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CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICE 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP") AND AS TO MATTERS NOT ADDRESSED TO ISP IS SUBJECT TO THE LAWS OF MEXICO AND TO THE JURISDICTION OF THE COURTS OF MEXICO CITY, MEXICO. ER 128.

DTVLA's motion to compel pursuant to 9 U.S.C. § 16(a)(3). *See Quackenbush v. Allstate Ins. Co.*, 121 F.3d 1372, 1379 (9th Cir. 1997) ("[W]here an order compelling arbitration is inextricably bound up with an injunction order, we have jurisdiction to review both orders under 28 U.S.C. § 1292(a)") (internal citations and quotations omitted).

II

We address the conflict created by the parties' multiple, contemporaneously-executed agreements, which contain seemingly conflicting forum selection clauses. The district court relied on the Fifth Circuit's opinion in *Personal Security & Safety Systems, Inc. v. Motorola Inc.*, 297 F.3d 388 (5th Cir. 2002).

Personal Security involves an electronics developer who enters into a stock purchase agreement and accompanying product development agreement with Motorola. *Id.* at 390. The developer sues, alleging that Motorola breached its obligations under the stock purchase agreement. *Id.* at 391. Motorola maintains that the developer's claims are covered by the product development agreement's arbitration clause, which provides, *inter alia*, that "the parties hereby agree to resolve by binding arbitration any and all claims, demands, actions, disputes, controversies, damages, losses . . . arising out of or relating to this Agreement." *Id.* at 392. The developer responds that his claims are based on obligations set forth in the stock purchase agreement, an entirely separate document, and therefore that document's forum selection clause should govern. That clause requires that "any suit or proceeding brought hereunder shall be subject to the exclusive jurisdiction of the courts located in Texas." *Id.* at 395.

[1] The Fifth Circuit finds that the stock purchase agreement's forum selection clause requires only that the parties litigate in Texas courts those disputes that are not subject to arbitration, such as an action to enforce an arbitration award.

Id. at 396. The court finds that although the stock purchase agreement and the product development agreement address different facets of the parties' relationship, "they were executed at the same time as part of the same overall transaction." *Id.* at 393. The court concludes that:

> where the parties include a broad arbitration clause in an agreement that is 'essential' to the overall transaction, we will presume that they intended the clause to reach all aspects of the transaction—including those aspects governed by other contemporaneously executed agreements that are part of the same transaction.

Id. at 394-95. The court holds that the product development agreements' arbitration provision is broad enough to cover the developer's claims arising under the contemporaneously-executed stock purchase agreement. *Id.* at 395-96.

The record in the case before us contains a district court finding that the Sublicense Agreement is "an essential agreement to the overall transaction" and "establishes the initial contractual relationship between the parties." The district court rejected Televisa's claim that the Letter Agreement alone sets forth the blackout obligations. Section 6.6, the court noted, establishes the blackout requirement as one of Televisa's "material obligations" under the Sublicense Agreement; section 6.7 states that: "Any breach of this clause 6 shall be considered a material breach of this Agreement." The district court also found that the seeming conflict between the Sublicense Agreement and Letter Agreement is reconcilable by interpreting the Letter Agreement as requiring only that the parties litigate in the courts of Mexico "those disputes that are not subject to the arbitration clause." The district court held that the parties' disputes are within the scope of the Sublicense Agreement's arbitration clause.

III

We review the district court's order compelling arbitration *de novo*. *Bradley v. Harris Research, Inc.*, 275 F.3d 884, 888 (9th Cir. 2001). We review the factual findings underlying the district court's decision for clear error. *Id.*

IV

[2] The Supreme Court instructs that "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). The most minimal indication of the parties' intent to arbitrate must be given full effect. *Republic of Nicaragua v. Standard Fruit Co.*, 937 F.2d 469, 478 (9th Cir. 1991). Whenever the scope of the arbitration clause is fairly debatable or reasonably in doubt, the court should decide the question of construction in favor of arbitration, *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 583 (1960); if the agreement is susceptible of an interpretation that would allow arbitration, any doubts should be resolved in favor of arbitration. *French v. Merrill Lynch*, 784 F.2d 902, 908 (9th Cir. 1986); *see also Georgia Power Co. v. Cimarron Coal Co.*, 526 F.2d 101, 106 (6th Cir. 1975) ("[A]rbitration should not be denied unless it may be said with positive assurance that the clause does not cover the dispute.") (internal citations and quotations omitted).

[3] DTVLA's claims are derived from obligations set forth in both the parties' Sublicense Agreement and the Letter Agreement. The district court correctly found, however, that the Sublicense Agreement is the formal, more comprehensive agreement between the parties. The Sublicense Agreement covers numerous subjects other than the blackout requirement, including the licensing of intellectual property rights and such standard contract terms as consideration, cancellation and modification, liability, warranty and indemnity. The

Letter Agreement by contrast is limited primarily to Televisa's blackout obligations. The Sublicense Agreement expressly incorporates the Letter Agreement and Televisa's blackout obligations thereunder in § 6.6. Failure to comply with either constitutes a material breach of the Sublicense Agreement. The Letter Agreement itself is annexed to the Sublicense Agreement and referred to in § 21.5 of the latter as "an integral part of this Agreement."

[4] Regarding its scope, the Sublicense Agreement's arbitration clause purports to cover "*[a]ll controversies and claims relating, related to or arising out of* this agreement" (emphasis added). Such language indicates the parties' intention that the clause govern a broad range of disputes extending beyond those solely relating to the contract. *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1464 (9th Cir. 1983) (acknowledging that arbitration clauses using the phrase "arising out of or relating to" an agreement are intended by parties to cover a much broader scope of disputes); *see also Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 398 (1967) (recognizing as "broad" a clause requiring arbitration of "[a]ny controversy or claim arising our of or relating to" the agreement); *Drews Distrib., Inc. v. Silicon Gaming, Inc.*, 245 F.3d 347, 350 (4th Cir. 2001) (same); *Acevedo Maldonado v. PPG Industries, Inc.*, 514 F.2d 614, 616 (1st Cir. 1975) (same).

[5] In addition to what can be gleaned from the clause's language, a separate section of the Sublicense Agreement expressly explains the parties' intent regarding the handling of disputes: "The parties agree that reliance upon courts of law and equity can add significant costs and delays to the process of resolving disputes. Accordingly, they recognize that *an essence of this agreement is to provide for the submission of all Arbitrable Disputes to binding arbitration*" (emphasis added). Nothing in the Letter Agreement positively indicates that the parties intended to exempt from the scope of the arbitration clause disputes pertaining to obligations under that

agreement. The seemingly conflicting forum selection clause is not sufficient, especially where the parties were aware of the Sublicense Agreement's sweeping statements endorsing and adopting arbitration as the means of resolving disputes.

[6] Even if DTVLA's claims arise solely under the Letter Agreement, other circuits hold in analogous circumstances that the arbitration clause in the principal agreement controls. *See, e.g., Personal Security*, 297 F.3d at 394 (5th Cir.) ("Even assuming that the Stock Purchase Agreement is the heart of the transaction at issue here, however, this fact is not dispositive because the arbitration provision is contained in an agreement that was essential to the overall transaction."); *Drews Distributing, Inc.*, 245 F.3d at 350 (4th Cir.) ("The question before us in not whether this dispute . . . grows out of the Letter Agreement[, which contains no arbitration clause,] or the Distributor Agreement, but rather whether it is 'related to' the Distributor Agreement.").

[7] We affirm the district court's decision to grant DTVLA's motion to compel arbitration.

V

We review the district court's denial of Televisa's motion for a preliminary injunction for an abuse of discretion. *Southwest Voter Registration Project v. Shelley*, 344 F.3d 914, 918 (9th Cir. 2003) (en banc). A decision constitutes an abuse of discretion where it is based on an error of law or clearly erroneous findings of fact. *Id.*; *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 (9th Cir. 2001). We review the district court's interpretation of underlying legal principles *de novo*, *Shelley*, 344 F.3d at 918. (citing *Bay Area Addiction Research & Treatment, Inc. v. City of Antioch*, 179 F.3d 725, 730 (9th Cir. 1999)).

VI

[8] Televisa cannot establish a likelihood of success on or any serious questions going to the merits of its claim. We

affirm the district court's denial of Televisa's motion for preliminary injunction.

AFFIRMED